




**Resource Chart for POs/TCs for Check-in with States to Ensure States are Maintaining Primacy**

Primacy Criteria	Criteria Components	Examples of documents that could be reviewed (not exhaustive list)	General questions to ask	Meets criteria	Lacking to completely deficient (*)
					 
A) Adequate Laws and Regulations	1) Use restrictions	State pesticide law(s); unlawful acts section	Have there been any changes to laws that impact/remove the following prohibited acts:		
			Use inconsistent with its labeling?	no	yes
			Use of an Experimental Use Permit contrary to permit?	no	yes
			Use of pesticide in human tests contrary to 12(a)(2)(P)?	no	yes
			Requiring RUPs to be applied only by or under the direct supervision of a certified applicator?	no	yes
	2) Authority to enter	State pesticide law(s); inspection authority; regulations; interpretive guidances	Have there been any changes to laws that impact/remove the state's ability to enter, through consent, warrant or other authority, premises or facilities where pesticide use violations may occur?	no	yes
			Have there been any changes to impact/remove the state's authority to take samples?	no	yes
	3) Flexible remedies	State pesticide law(s); enforcement authority	Have there been any changes to laws/regulations that impact/remove the state's flexibility to issue from the following array of enforcement remedies:		
			Warning letters or notices of noncompliance	no	yes
			Administrative or civil actions (e.g. license or certification suspensions and revocations, civil penalties)	no	yes
			Criminal sanctions	no	yes
B) Adequate Procedures	1) Training	Inspector training program; Inspection files	Are adequate procedures in place, in cooperation with EPA, to train inspectors to discover violations, obtain consent, preserve evidence and collect samples?	yes	no
			Has the state had problems in enforcing pesticide use due to lack of adequate training of state inspectors?	no	yes

			Are procedures in place to train enforcement personnel in case development and maintenance of case files?	yes	no
			Do these procedures involve on-the-job training as well as a continuing education program?	yes	no
	2) Sampling techniques & laboratory capability	Inspection files; sampling SOPs; QAPP	Does the state have access to equipment necessary to perform sampling?	yes	no
			Is the state able to use samples collected to support enforcement actions?	yes	no
			Does the state have access to laboratory analysis for samples?	yes	no
			Does the state have a quality assurance program in place?	yes	no
			Does the state participate in a check sample program?	yes	no
			Are the state's sampling techniques and analytical capabilities helping the state's ability to successfully find and prosecute persons who misuse pesticides?	yes	no
			Have the state's sampling and laboratory procedures kept pace with developments in analytical technology?	yes	no
	3) Processing complaints	State's complaint tracking system	Does the state have a complaint tracking system that contains:		
			a. a method to send complaints to a main organizational unit for review;	yes	no
			b. the ability to track different stages of the complaint;	yes	no
			c. method to refer the complaint for investigation;	yes	no
			d. the status of the complaint or case	yes	no
			e. a procedure for notifying citizens of the disposition of the complaint	yes	no
			Are complaints processed quickly and efficiently?	yes	no
			Do citizens alleging a use violation seek redress from EPA after first directing their complaint to the state?	no	yes
			Is the state responding to Section 27(a) referrals in a timely and appropriate manner?	yes	no
	4) Compliance monitoring	Inspection and enforcement case files;	Do the enforcement actions taken by the state have sufficient correlation to the gravity of the violation?	yes	no

	and enforcement	enforcement response policy	Is the state's attorney general's office willing to pursue cases referred by the state?	yes	no
			Are state resources being directed towards the more significant enforcement problem areas?	yes	no
			As demands of an adequate program change, are enforcement priorities adjusted?	yes	no
	5) Education	State's applicator outreach program	Is the state's education program encouraging voluntary compliance with pesticide use restrictions?	yes	no

**Flag Definitions:**

Green



- State meets primacy criteria in FIFRA sections 26 and 27 and the 1983 Final Interpretive Rule

Yellow



- Areas of concern have been identified which could jeopardize the state's primacy status in the future if not resolved

Red



- State primacy criteria in FIFRA sections 26 and 27 are not met; Rescission proceedings should start, per FIFRA section 27(b)

Note (\*) - Findings that fall into the "yellow-flag/red-flag" column can represent a range of issues from areas of concern or areas needing improvement that if not addressed could jeopardize the state's primacy status in the future; to issues that require immediate attention that would cause the state to lose primacy, either in part or in whole. The range of EPA responses to any area in the yellow/red column include:

Action Type	Description
No Action	EPA and State agree no action required.
Tier 1- Informal Notification	State is notified of potential areas of inadequacies and provided opportunity to refute or resolve.
Tier 2- Formal Notification	State is notified of inadequacies by way of written communication and provided opportunity to refute or address.
Tier 3- Formal 27(b) Notice	After Administrator determines that a State with primacy is not carrying out such responsibility, EPA shall notify State of inadequate aspects of the program. State has 90 days to correct inadequacies.

Any issue identified in the yellow/red flag area needs to be further documented, addressed and fully explained in the region's evaluation report.